NO. 87 1418

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

OCTOBER TERM, 1987

JACK TICKLE and RAY MONTEITH,

PETITIONERS

vs.

SHELBY COUNTY, et al,

RESPONDENTS

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF TENNESSEE

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

JAMES D. CAUSEY, Counsel of Record
208 Adams Avenue
Memphis, Tennessee 38103
(901) 526-0206

Attorney for Petitioners

TABLE OF CONTENTS

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

JACK TICKLE and RAY MONTEITH, Plaintiffs/ Appellees vs. SHELBY COUNTY; BOARD OF COUNTY COMMISSIONERS; COUNTY MAYOR WILLIAM MORRIS; SHELBY COUNTY BOARD OF PUBLIC UTILITIES; and WILBUR M. BETTY, Superintendent of Shelby County Board of Public Utilities, Defendants/ Appellants	)	SHELBY LAW NO. 38 (No. 07356 T.D. Below) Filed: November 23, 1987

O R D E R

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied.

PER CURIAM

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION OF JACKSON

JACK TICKLE and RAY MONTEITH, Plaintiffs/ Appellants vs. SHELBY COUNTY; BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY; COUNTY MAYOR WILLIAM MORRIS; SHELBY COUNTY BOARD OF PUBLIC UTILITIES; and WILBUR M. BETTY, Superintendent of the Shelby County Board of Public Utilities, Defendants/ Appellees/ Appellants vs. THE CITY OF MILLINGTON, TENNESSEE, Third-Party Defendant/ Appellee	)	Shelby Law HON. ROBERT A. LANIER Judge Filed December 17, 1985

JAMES D. CAUSEY and ALICE L. GALLAHER, of Memphis, Attorneys for Plaintiffs/Appellants JACK TICKLE and RAY MONTEITH.

BRIAN L. KUHN, SHELBY COUNTY ATTORNEY, and BRITTON LAMB, ASSISTANT COUNTY ATTOR-

NEY, of Memphis, Attorneys for Original Defendants/Appellants and Defendants/ Appellees.

JAMES W. WATSON, of WATSON, ARNOULT & QUINN, Memphis, Attorney for Third-Party Defendant/ Appellee, CITY OF MILLINGTON, TENNESSEE.

REVERSED IN PART: AFFIRMED IN PART: REMANDED.

OPINION FILED: December 17, 1985

TOMLIN, J.

This case arose out of an alleged contract between plaintiffs and the Shelby County Board of Public Utilities regarding installation of water lines in a subdivision being developed by plaintiffs. The original defendants filed an answer and also a third-party complaint against the City of Millington for indemnification in the event of an adverse judgment against them.

The original defendants and the third-party defendant filed what they have styled "motions for summary judgment." Each motion contained the allegation that the complaint

or the third-party complaint, as the case may be, failed to state a claim upon which relief could be granted. The trial court granted both motions, holding that neither the original complaint nor the third-party complaint stated a cause of action. The sole issue presented by this appeal is whether the trial court was in error in granting the motions.

While labeled "summary judgment motions," no affidavits were filed. Nor does the record reflect that the court considered anything outside the pleadings. Accordingly, we treat these motions as having been filed and considered under Rule 12.02(6) Tenn. R. Civ. P. Thus, the complaint and the third-party complaint stand on their own. We deem it appropriate to copy them here.

The original complaint, in its entirety, stated:

> Come now the Plaintiffs and would respectfully show unto the Court as follows:
>
> 1. Plaintiff, Jack Tickle,

is a resident citizen of Shelby County, Tennessee.

2. Plaintiff, Ray Monteith, is a resident citizen of Shelby County, Tennessee.

3. Defendant, Shelby County, is a political subdivision of the State of Tennessee.

4. Defendant, Board of County Commissioners of Shelby County, is the governing legislative body of Shelby County.

5. Defendant, County Mayor William Morris, is the Chief Executive Officer of Shelby County, Tennessee.

6. Defendant, Shelby County Board of Public Utilities (hereinafter referred to as the "Board"), is an administrative agency of Shelby County.

7. Defendant, Wilbur M. Betty, is the Superintendent of the Shelby County Board of Public Utilities.

8. In the early 1970's, Wallace Johnson began plans for developing the Woodmere Subdivision, a residential subdivision to be located in northeast Shelby County near Millington, Tennessee.

9. Later, Plaintiffs Tickle and Monteith, took over the development of Woodmere Subdivision.

10. Plaintiffs, Tickle and Monteith, made plans to develop the subdivision in three (3) sections; first,

Section A; second, Section C; third, Section B. Plaintiffs are currently in the process of developing Section B and have developed Sections A and C.

11. Prior to the development of Sections A and C, Defendant, Shelby County, through the Board, agreed to install the water facilities in the Subdivision.

12. By letter dated February 24, 1978, R. E. Gallagher, then the Superintendent of Public Utilities, assured Plaintiff Tickle that the cost of providing water facilities to the Subdivision would be subject to the County's usual refund agreement. The letter is attached hereto as Exhibit "1" and incorporated herein as if set forth verbatim.

13. In reliance upon Dr. Gallagher's representation in his capacity as Board Superintendent, Plaintiffs Tickle and Monteith made plans for developing the Subdivision, including arranging financing and entering into various real estate sale contracts.

14. By letter dated August 21, 1978, Dr. Gallagher demanded a cash deposit of $59,737.00 for the construction of the water facilities in Section A of the Subdivision. A copy of this letter is attached hereto as Exhibit "2" and incorporated herein as if set forth verbatim.

15. Dr. Gallagher's letter conditioned acceptance of the bid for the construction contract on the waiver of any rights under the County's usual

refund agreement.

16. Since Plaintiffs Tickle and Monteith had previously arranged financing and executed real estate sales contracts, they paid the cash deposit to the County.

17. Tapp Enterprises, Inc. submitted the successful bid to construct the water facilities in Section A of the Woodmere Subdivision, and also Phase I of the Crenshaw Subdivision which is located in northeast Shelby County near Millington, Tennessee.

18. Upon completion of the water facilities in Phase I of the Crenshaw Subdivision, the County refunded the cash deposit required in advance; however, the County failed to refund the advance cash deposit made by the Plaintiffs to secure Section A of the Woodmere Subdivision.

19. By letter dated August 14, 1980, Dr. Gallagher demanded a cash deposit in the amount of $44,471.99 before the Board would execute a construction contract with the successful bidder for the installation of water facilities in Section C of the Woodmere Subdivision. A copy of this letter is attached hereto as Exhibit "3" and incorporated herein as if set forth verbatim.

20. According to the letter, the Board made a previous agreement with the City of Millington and, therefore, the water installation would not be subject to the County's usual refund policy.

21. Plaintiffs Tickle and Monteith paid the cash deposit because they were already committed to begin development of Section C.

22. By letter dated April 23, 1981, Dr. Gallagher demanded a cash deposit in the amount of $71,932.30 for the installation of water in Section B of the Woodmere Subdivision. According to the letter, which is attached hereto as Exhibit "4" and incorporated herein as if set forth verbatim, the amount was non-refundable.

23. Because of adverse economic conditions, the Plaintiffs declined to install water facilities in Section B in 1981.

24. By letter dated May 9, 1983, Wilbur M. Betty, the current Superintendent of the Shelby County Board of Public Utilities, demanded the sum of $59,746.50 before the Board would execute a contract for the installation of water facilities in Section B. A copy of the letter is attached hereto as Exhibit "5" and incorporated herein as if set forth verbatim.

25. According to the May 9th letter, the amount was not refundable; however, in a letter dated May 31, 1983, Mr. Betty indicated that upon completion of the installation of the water facilities in Section B of the Woodmere Subdivision, the Board would prepare a residential refund agreement. A copy of this letter is attached hereto as Exhibit "6" and incorporated herein as if set forth

verbatim.

26. In a letter dated October 24, 1983, Mr. Betty enclosed a Refund Agreement #182 for Section B of the Woodmere Subdivision. A copy of the letter is attached hereto as Exhibit "7" and a copy of the Refund Agreement is attached hereto as Exhibit "8". Both are incorporated herein as if set forth verbatim.

27. Despite numerous inquiries to the Board of Public Utilities, Mr. Betty, the Board of County Commissioners, individual Commission members, and the County Attorney's Office, by Plaintiffs Tickle and Monteith, the County has refused to refund the cash deposits made by the Plaintiffs on Sections A and C of Woodmere Subdivision. A letter dated January 1, 1984, written by Britton Lamb, Assistant County Attorney, verifies the refusal. A copy of the letter is attached hereto as Exhibit "9" and incorporated herein as if set forth verbatim.

28. The County, acting through the Board, has refused to refund the monies even though Dr. Gallagher initially stated in 1978 that the Board's usual refund policy would apply to Sections A, B and C of the Subdivision, and the Plaintiffs relied on this representation in developing the Subdivision.

29. In addition to reliance on a specific representation by Dr. Gallagher acting in his capacity as Super-

intendent of the Board of Public Utilities, the Plaintiffs relied on the County's customary refund policy which the Board, for reasons undisclosed to the Plaintiffs, violated in this instance.

30. The Defendants have arbitrarily refused to refund monies due these Plaintiffs which has previously been and continues to be their established policy in Shelby County except as it pertains to these Plaintiffs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray:

(1) That process issue and be served upon the Defendants requiring them to appear and answer this Complaint, but not under oath, as their oath thereto is hereby expressly waived.

(2) That the Plaintiffs be awarded a refund of the cash deposit paid to the County for installation of water facilities to Sections A and C as well as costs and prejudgment interest.

(3) That the Defendants be ordered to comply with their Refund Agreement set forth in Paragraph 26 above.

(4) That the Plaintiffs reserve the right to amend these pleadings to conform to the proof and facts as they develop.

(5) That the Plaintiffs be awarded further, general or specific relief

to which they are entitled in the premises.

A portion of the Defendants' third-party complaint against the City of Millington reads as follows:

1.

They incorporate herein all of the statements and exhibits in their foregoing Answer.

2.

Third-party plaintiffs without fail enter into refund agreements with the developers of each and every subdivision, with the one exception mentioned in the complaint.

3.

The only reason they did not enter into such an agreement with plaintiffs was because Millington refused to allow original plaintiffs to have original defendants construct water lines and appurtenances in Woodmere Subdivision, Section "A" and "C" if such refund agreements were executed, because Millington didn't want to pay the agreements off when Millington annexed Woodmere, per T.C.A. 5-16-110(b).

4.

Wherefore defendants, as third-party plaintiffs, pray for judgment against the City of Millington for

all sums found due against defendants and in favor of plaintiffs.

It should be noted that the original complaint alleged that plaintiffs relied on the representation of the then Superintendent of the Shelby County Board of Public Utilities who initially advised them that the Board's usual refund policy would be followed, and that "[i]n addition to reliance on a specific representation by Dr. Gallagher acting in his capacity as Superintendent of the Board of Public Utilities, the Plaintiffs relied on the County's customary refund policy which the Board, for reasons undisclosed to the Plaintiffs, violated in this instance."

A complaint should not be dismissed for failure to state a claim, unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Sullivant v.

Americana Homes, Inc., 605 S.W.2d 246 (Tenn. App.), appeal denied, (1980). Likewise, in scrutinizing a complaint in the face of a Rule 12.02(b) motion, the court should construe the complaint liberally in favor of the plaintiff, taking all of the allegations of face therein as true. Id. Finally, a motion to dismiss for failure to state a claim upon which relief can be granted is an admission that all relevant and material averments contained in the complaint are true. Shelby County v. King, 620 S.W.2d 493 (Tenn. 1981).

In our opinion, the original complaint sufficiently charges the existence of a refund policy, a representation to the developer how that refund policy would be applied to its subdivision, and action on the part of the plaintiff to develop this subdivision based upon such representations by the Superintendent of the Shelby County Board of Public Utilities. We are in no way hold-

ing that plaintiffs may likely prevail upon their claims. We do hold that they have alleged sufficient facts so as to state a cause of action and are entitled to a trial on the merits. For this reason, we are of the opinion that the trial judge erred in granting the motion to dismiss the original complaint.

This Court's interpretation of the third-party complaint is that original defendants have sued the City of Millington to recoup any sums found due plaintiffs by original defendants. In the third-party complaint, original defendants/third-party plaintiffs alleged that they did not enter into refund agreements with plaintiffs in connection with their subdivision because the City of Millington would not honor these agreements when Millington annexed plaintiffs' subdivision. In its motion to dismiss, third-party defendant, City of Mill-

ington, asserted that it had not annexed any of the plaintiff's subdivision and that it would not annex any of it. In light of this, we agree with the trial court that the third-party complaint stated no claim upon which relief can be granted. Accordingly, we affirm the action of the trial court in dismissing the third-party complaint and reverse the action of the court below in dismissing the original complaint. This cause is remanded to the Circuit Court of Shelby County for a trial on the merits. Costs in this cause are taxed to original defendants, for which execution may issue, if necessary.

TOMLIN, J.

CRAWFORD, J.

HIGHERS, J.

IN THE COURT OF APPEALS OF TENNESSEE

WESTERN SECTION AT JACKSON

JACK TICKLE and RAY MONTEITH, Plaintiffs/ Appellees vs. SHELBY COUNTY; BOARD OF COUNTY COMMIS-SIONERS; COUNTY MAYOR WILLIAM MORRIS; SHELBY COUNTY BOARD OF PUBLIC UTILITIES; and WILBUR M. BETTY, Superintendent of Shelby County Board of Public Utilities, Defendants/ Appellants vs. THE CITY OF MILL-INGTON, TENNESSEE, Third-Party Defendant/ Appellee	)	SHELBY LAW NO. 38 Filed September 4, 1987

O R D E R

This matter came on to be regularly

heard and considered by the Court on the record, and for the reasons stated in the Opinion of the Court, filed this date, it is ordered that:

1. The judgment of the trial court is reversed.

2. Costs are adjudged against the plaintiffs-appellees for which execution may issue, if necessary.

ENTERED: September 4, 1987

HIGHERS, J.

TOMLIN, P.J., W.S.

FARMER, J.

IN THE COURT OF APPEALS OF TENNESSEE

WESTERN SECTION AT JACKSON

JACK TICKLE and RAY MONTEITH,	)	
Plaintiffs/ Appellees	)	
vs.	)	SHELBY LAW NO. 38
SHELBY COUNTY; BOARD OF COUNTY COMMISSIONERS; COUNTY MAYOR WILLIAM MORRIS; SHELBY COUNTY BOARD OF PUBLIC UTILITIES; and WILBUR M. BETTY, Superintendent of Shelby County Board of Public Utilities,	)	Filed September 4, 1987
Defendants/ Appellants	)	
vs.	)	
THE CITY OF MILLINGTON, TENNESSEE,	)	
Third-Party Defendant/ Appellee	)	

From the Circuit Court of Shelby County, Tennessee
The Honorable Robert A. Lanier, Judge

James D. Causey and Alice L. Gallaher

of Memphis
Attorneys for Plaintiffs/Appellees

Brian L. Kuhn
Shelby County Attorney
and
Britton Lamb
Assistant County Attorney

James W. Watson of Memphis
WATSON, ARNOULT & QUINN
Attorney for Third-Party
Defendant/Appellee

Opinion Filed: September 4, 1987

REVERSED

HIGHERS, J.

TOMLIN, P.J., W.S. (Concurs)

FARMER, J. (Concurs)

This appeal arises out of a suit filed in the Circuit Court of Shelby County in April, 1984 by the plaintiffs, Jack Tickle and Ray Monteith, against Shelby County, the Shelby County Board of County Commissioners, County Mayor William Morris, the Shelby County Public Utilities Board, and Wilbur M. Betty, Superintendent of the Public Utilities Board. The plaintiffs, developers

of a residential subdivision, sought money due under an "agreement" entered into in connection with the installation of water facilities in the subdivision.

The defendants filed a motion for summary judgment in February 1985. The trial judge granted the motion and dismissed the action; the plaintiffs appealed. Treating the motion as having been filed and considered under T.R.Civ.P. 12.02(6), this Court reversed the trial court's dismissal of the complaint, and remanded for trial.

On remand, the trial was held on October 7, 1986. On October 29, 1986, an order was entered awarding plaintiffs the sum of $104,208.99, plus prejudgment interest in the amount of $25,180.00; the action against Wilbur M. Betty was dismissed. The defendants have appealed the judgment against them.

The first issue on appeal is whether the decision of the trial court is supported by a preponderance of the evidence.

Plaintiffs were the developers of Woodmere Subdivision, located in northeast Shelby County near Millington, Tennessee. Plans called for the subdivision to be developed in three sections: first, Section A; second, Section C; third, Section B. Shelby County agreed to install the water facilities.

By letter dated February 24, 1978, R. E. Gallagher, then Superintendent of Public Utilities, provided the plaintiffs with an estimate of the cost of installing the water facilities. He stated that the cost would be "subject to our usual refund agreement." His letter is as follows:

> Dear Mr. Tickle:
>
> Based on current unit prices being offered this Board, the estimated cost of the water facilities to Woodmere Subdivision, First Section, is $45,870.00. Of this amount approximately $39,980.00 will be subject to our usual refund agree-

ment, a copy of which is enclosed for your information. The cost of fire protection, $5,890.00, is non-refundable.

The estimated cost of the complete Woodmere Subdivision is $155,457.00, which includes the amount given above for Section 1. Of this amount $132,225.00 is refundable, approximately, subject to our refund agreement. The cost of fire protection, $23,232.00, is non-refundable.

Should this estimate be acceptable to you, plans and specifications will be prepared and used to advertise for competitive bids for this installation. The successful bid prices, plus 10%, will be the cash deposit required before installation could begin. In addition, curbs and gutters, sewers and drainage pipes must be painted on the vertical face of the curb at the desired location on each lot where the water meter box should be located. Care should be taken so that this location is a minimum of four feet from the sewer ditch and will not be in a proposed driveway. In addition, lot lines must be marked for fire hydrant installations.

If you have any questions, please contact this office.

Very truly yours,

R. E. Gallagher

The "refund" is actually a type of re-

bate. The developer pays a certain sum of money to the Utilities Board (cost of installation plus ten percent), a portion of which is spent for fire hydrants and fittings. The rest is used to pay a contractor for actual installation of the water system. Subsequently, for ten years after completion ofthe system, the Utilities Board pays the developer a specific amount of money for each home in the subdivision that is connected to the water main. In no event, however, can the developer receive more than the amount actually paid to the Utilities Board, less the sum expended for fire protection.

In August 1978, Gallagher informed the plaintiffs, by letter, that a low bid for installing the water facilities in Section A of Woodmere had been received. In addition, Gallagher's letter provided that the plain-

tiffs, by accepting the bid and tendering a check, would waive any right to the usual refund agreement. The language in his letter specifically provided: "According to our understanding, upon acceptance of the above you waive any rights to our usual refund agreement. This will constitute a total charge to your company." The County maintains that the waiver was necessary because of a contract between Shelby County and the nearby City of Millington, which had plans for possible annexation of the subdivision. Plaintiffs made the payment, and the water facilities were installed.

In August of 1980, a low bid was received for the water system in section C of Woodmere. Again, acceptance of the bid was conditioned on waiver of the refund, stating: "In accordance with the previous agreement with the City of Millington, this water installation will not be subject to any

refund." Plaintiffs tendered a check, and installation began.

Bids for section B of Woodmere were received in May 1983. Although the cost was first stated to be non-refundable, the Utilities Board later entered into a refund agreement for that section only. Plaintiffs' position is that they also are entitled to a refund for sections A and C of Woodmere. Despite numerous inquiries, however, the County has refused the plaintiffs' demands.

Plaintiffs insist that they had a contract with the defendants, under the terms of which the Utilities Board would extend its usual refund agreement to the cost of providing water facilities for Woodmere. Their contention is that the letter of February 24, 1978, constituted an offer which they accepted. The evidence proves otherwise.

The February letter provided only that if the cost estimate was acceptable to the plaintiffs, the Utilities Board would pre-

pare plans and specifications that would be used to advertise for competitive bids. At that point, there were no mutual obligations; either party could have backed out of the arrangement without penalty. There were, however, three binding contracts entered into between the plaintiffs and the Utilities Board; one for each section of Woodmere. The offers were made when Gallagher communicated the amount of the low bid, and requested a check from the plaintiffs. Plaintiffs accepted the offers by tendering payment.

Plaintiffs further maintain that the defendants are estopped from denying them a refund for sections A and C of the subdivision.

In order for there to be an estoppel, it is necessary that the person estopped make a representation upon which another relies in acting to his prejudice. See Huffine v. Riadon, 541 S.W.2d 414 (Tenn. 1976);

Mitchell Engineering Co. Div. of CECO v. Melton, 478 S.W.2d 888 (Tenn. 1972); Bokor v. Holder, 722 S.W.2d 676 (Tenn. App. 1986); Duke v. Hopper, 486 S.W.2d 744 (Tenn. App. 1972).

In the case before us, Gallagher's letter of February 24, 1978, states that the cost of the water facilities is refundable. Wilbur Betty, the present Superintendent of Public Utilities, stated at trial that refund agreements were normally entered into with each developer. Plaintiffs assert that they acted to their prejudice in reliance on both the letter, and the usual policy of granting refunds.

The plaintiffs were initially informed that a refund for sections A and C of Woodmere Subdivision would be forthcoming. The contracts that were subsequently entered into, however, were conditioned expressly on the plaintiffs' waiver of the right to any refund agreements. After such a voluntary

waiver, plaintiffs clearly could no longer rely upon the previous representation to the contrary. Subsequent to the execution of the contracts, the record reveals no representations of any kind upon which the plaintiffs could rely. Therefore, there is nothing upon which to base an estoppel.

We hold that the decision of the trial court is contrary to the preponderance of the evidence. The other issues raised by the parties are thus pretermitted.

The judgment of the trial court is reversed. Costs of the appeal are adjudged against the plaintiffs-appellees.

HIGHERS, J.

TOMLIN, P.J., W.S.

FARMER, J.

AMENDMENT 14

§1. Citizenship - Due process of law - Equal protection. - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.

TENNESSEE CODE ANNOTATED
§§5-16-110 and 5-16-111
(Original Text)

5-16-110. Annexation of facilities by municipality - Arbitration - Rights of bondholders. - (a) Upon annexation by any municipality of an area including any of the facilities herein authorized and provided for, the municipality and the county legislative body or other governing body shall attempt to reach agreement in writing for the allocation and conveyance to the municipality of any or all functions, rights, duties, property, assets or liabilities in conjunction with such facilities that justice and reason may require in the circumstances. The annexing municipality, for and to the extent that it may choose, shall have the exclusive right to provide such facilities within the annexed area. Subject to such exclusive right, any such matters upon which the respective parties are not in agreement in

writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration in accordance with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators, and subdivision (2) of §23-501, shall not apply to any arbitration arising hereunder. The award so rendered shall be transmitted to the chancery court, and thereupon shall be subject to review in accordance with §§23-513 through 23-515 and §23-518.

(b) If there are outstanding bonds or other obligations in conjunction with the public facilities herein provided for, the agreement or arbitration award shall also provide that the municipality will operate such facilities in the annexed territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations. The rights vested in the

holders of all such outstanding bonds or other obligtions shall be fully preserved and in no wise impaired by any agreement or arbitration award.

5-16-111. Limitation on service near city or town. - Effect of failure of municipality to provide facilities. - A county may not extend any public facilities, as provided for in this chapter, within five (5) miles of any part of the boundary of an incorporated city of town unless such incorporated city or town has failed to take appropriate action to provide a specified public facility or facilities in a specified area or areas for a period of ninety (90) days after having been petitioned to do so by resolution of the county legislative body or other governing body, which resolution shall contain a plan of service, and shall be accompanied by a preliminary engineering report and a financial feasibility

report, and shall set out the type, standard and schedule of installation of public facilities and the specified area or areas proposed to be served by the county, and which resolution, plan of service and reports shall have been previously submitted to the local planning commission for review as provided for in §5-16-112.

TENNESSEE CODE ANNOTATED
§§5-16-110 and 5-16-111
(Amended Text)

5-16-110. Municipal annexation or incorporation - Effect on facilities. - (a)(1) Upon annexation by any municipality, or by including within the corporate territorial limits of any incorporating municipality, of an area including any of the facilities herein authorized and provided for, the municipality and the county legislative body or other governing body shall attempt to reach agreement in writing for the allocation and conveyance to the municipality of any or all functions, rights, duties, property, assets or liabilities in conjunction with such facilities that justice and reason may require in the circumstances.

(2) The annexing or incorporating municipality, for and to the extent that it may choose, shall have the exclusive

right to provide such facilities within the annexed or incorporated area, and shall manifest such choice by proper resolution or ordinance at the first meeting of its governing body after the annexation or incorporation.

(3) Subject to such exclusive right, any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration in accordance with the state laws of arbitration effective at the time of submission to the arbitrators, and §29-5-101(2) shall not apply to any arbitration arising hereunder.

(4) The award so rendered shall be transmitted to the chancery court, and thereupon shall be subject to review in accordance with §§29-5-113 - 29-5-115 and 29-5-118.

(5) Subsections (a)(1) and (a)(2) shall not apply to any city which is being incorporated that does not plan to furnish competing service to that which the county is now furnishing.

(b)(1) If there are outstanding bonds or other obligations in conjunction with the public facilities herein provided for, the agreement or arbitration award shall also provide that the municipality will operate such facilities in the annexed or incorporated territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations.

(2) The rights vested in the holders of all such outstanding bonds or other obligations shall be fully preserved and in no wise impaired by any

agreement or arbitration award.

5-6-111. Service near city or town - Restrictions. - A county may not extend any public facilities, as provided for in this chapter, within five (5) miles of any part of the boundary of an incorporated city or town unless such incorporated city or town has failed to take appropriate action to provide a specified public facility or facilities in a specified area or areas for a period of ninety (90) days after having been petitioned to do so by resolution of the county legislative body or other governing body, which resolution shall contain a plan of service, and shall be accompanied by a preliminary engineering report and a financial feasibility report, and shall set out the type, standard and schedule of installation

of public facilities and the specified area or areas proposed to be served by the county, and which resolution, plan of service and reports shall have been previously submitted to the local planning commission for review as provided for in §5-16-112.

CERTIFICATE OF SERVICE

I, James D. Causey, Counsel of Record for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 22 day of February, 1988, I served three copies of the Appendix to Petition for Writ of Certiorari on each of the several parties thereto, as follows:

On Mr. Britton Lamb, Assistant County Attorney, by mailing three copies in a duly addressed envelope, with first-class postage prepaid to: Suite 801 - 160 North Mid-America Mall, Memphis, Tennessee 38103.

It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

James D. Causey